

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6079

PETITION OF PAUL AND IDA J. DEKOUSIS
(Hearing held June 29, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, August 10, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-2.417. The petitioners propose the construction of a two-story addition that requires a variance of 13.3% from the maximum lot coverage. The maximum lot coverage is 18%.

Jody S. Kline, Esquire, and Louis Balodemas, an architect, represented the petitioners at the public hearing. Michelle Naru Oaks, a senior historic preservation planner with Maryland-National Capital Park and Planning Commission (M-NCPPC), also appeared at the public hearing.

The subject property is Lot 19, Block 6, Lipscomb and Earnest Addition Subdivision, located at 501 Tulip Avenue, Takoma Park, Maryland, 20912, in the R-20 Zone (Tax Account No. 1301062598).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a 17.9 x 28 foot two-story addition.
2. Mr. Kline stated that the subject property is located in the southeast section of Montgomery County, close to the District of Columbia line. Mr. Kline stated that the property's southern rear yard boundary backs up to C-1 zoning, on which is located an auto service center; the eastern side yard boundary adjoins R-20 zoning, which has an apartment building; the western side yard boundary adjoins R-60 zoning, which has a single-family dwelling; and the northern front yard boundary confronts R-60 zoned lots, on which are single-family homes.

See, Exhibit Nos. 12 [enlarged zoning vicinity map], 16 and 17 [streetscape photographs].

3. Mr. Kline stated that the subject property is located in the R-20 Zone and that the minimum lot size for the zone is 16,000 square feet. Mr. Kline stated that the R-20 Zone designation is for multi-family structures, with a maximum lot coverage of 18%. The petitioners' lot is 5,894 square feet. See, Exhibit No. 4 [site plan].
4. Mr. Balodemas testified that the petitioners' lot was recorded in 1902 and that the main dwelling was built in 1925. The property has an existing detached garage located in the southeast section of the lot. Mr. Balodemas testified that the Montgomery County Historic Preservation Commission [HPC] has designated the property as a contributing resource in the historic district.
5. Mr. Balodemas testified that the petitioners purchased the property in 1968 and converted it into three apartment units, which continue to be in use today. Mr. Balodemas testified that the petitioners propose the conversion of the house back to a single-family dwelling by removing all existing appurtenances that were for the apartment use and to restore the porch to its original position. See, Exhibit Nos. 13, 14 and 15 [house front and sides photographs].
7. Mr. Balodemas testified that because of the house's historic designation, the structure can not be demolished and rebuilt. Mr. Balodemas testified that the house can only be restored to comply with the historic requirements. Mr. Balodemas testified that the subject property is 50 feet wide and less than 6,000 square feet. Mr. Balodemas testified that the existing structures on the property currently exceed the 18% maximum lot coverage by 8%, and that the proposed construction will bring the lot coverage to 31%.
8. Mr. Kline stated that the property is unique as the result of the combined circumstances attending its size, its shape and the zoning that is imposed on the lot. Mr. Kline stated that the size of the lot is substandard for the R-20 zone (and, in addition, would be substandard for the R-60 zone, the single-family residential zone with the smallest minimum lot size) that the lot width is substandard for the zone, and that a maximum lot coverage of 18% for the subject property would result in a buildable envelope of approximately 800 square feet. Mr. Kline stated that the petitioners are limited to an 800 square foot buildable envelope, while the adjoining Lot 18 (in the R-60 zone) would permit a building of 1,500 square feet. Mr. Kline stated that the zoning and governmental policies that apply to the lot severely restrict any new construction on the property.

10. Ms. Oaks testified that the petitioners' house is a historic Sears House and that the Commission would not approve a permit for its demolition. Ms. Oaks testified that the M-NCPPC staff has worked with the petitioners to assure that the new construction would be historic and compatible with the neighborhood. Ms. Oaks testified that the new construction would restore the house to its original intent and reduce the density of the use on the lot.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is zoned R-20, which has a minimum lot size of 16,000 square feet. The subject property is 5,894 square feet, with a width of 50 feet and it is the smallest lot on the street. The lot size and width is substandard for the R-20 zone. Under the R-20 zone, the remaining building footprint on this lot is 800 square feet. See, Exhibit Nos. 4 [site plan] and 12 [enlarged zoning vicinity map].

The petitioners' house is a historic Sears House that is considered a historic resource by the Montgomery County HPC, and petitioners do not have the option of demolishing the existing house and replacing it with a new structure.

The Board finds that these are exceptional conditions peculiar to the petitioners' property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a two-story addition is the minimum reasonably necessary to

overcome the demonstrated hardship imposed by a strict application of the zoning ordinance.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the construction, as proposed, will restore the house to its original intent and reduce the density of use on the lot. The Board further finds that the variance will not be detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variance of 13.3% from the required 18% maximum lot coverage for the construction of a two-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witness and the representations of their attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Louise L. Mayer, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 10th day of August, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.